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IN THE

SUPREME COURT OF THE UNITED STATES.

ATC-BE

OCTOBER TERM, 1951.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, a Corporation,
Petitioner,

vs.

M. F. WHITE,
Respondent.

No. 615

PETITION FOR WRIT OF CERTIORARI
to the Supreme Court of Missouri

and

BRIEF IN SUPPORT OF PETITION.

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Cases Cited.

Affolder v. New York, C. & St. L. R. Co., 79 F. Supp. 365, 339 U. S. 96, 94 L. Ed. 683 ..... 4, 5, 6, 9, 10, 12, 14

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DARK PAGE BLEEDTHRU

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M. F. WHITE, Respondent.

No. .....

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Missouri.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Respondent's suit for damages for personal injuries sustained by him while in the employ of petitioner, based upon alleged violations of the Federal Employers' Liability Act (45 U. S. C. A. 51) and of the coupler section of the Safety Appliance Act (45 U. S. C. A., Chap. 1, Sec. 2),

resulted in a verdict and judgment in his favor when tried in the Circuit Court of the City of St. Louis, Missouri. On appeal by petitioner said judgment was affirmed by the Supreme Court of Missouri.

At the time of the accident respondent White was riding on the front footboard of an engine which was approaching a tank car for the purpose of coupling onto it (R. 45). As the engine got close to the car, respondent noticed that the drawbar of the engine was over to the right about eight inches (R. 48), but not over to the extreme and not quite to the bumper post, which prevents the drawbar from going out (R. 52). Respondent, realizing that the drawbar required adjustment in order to effect a coupling between the engine and the tank car, shoved the engine drawbar over with his foot and when the coupling made on impact his large toe was crushed (R. 49). The coupling made after drawbar was thus adjusted (R. 53).

Respondent's evidence demonstrated: That there was nothing unusual in the drawbar's being over to the side (R. 52, 57); that couplers have to be in alignment in order to couple automatically upon impact (R. 14, 22, 31, 46, 62); if the drawbar is out of line it must be lined up (R. 17, 23, 38); that they will not couple if the drawbar is about three inches out of line (R. 47); that the drawbar on the engine moves on a swivel; that it has to move from side to side to go around curves, the greater the curve the more the alignment has to be over to one side (R. 22, 53, 67, 72); that at the place of the accident there was a very sharp curve (R. 32); that there was no device permitting one to stand on the side and adjust the alignment of the drawbar; that it has to be done by hand or foot and necessitates going in between the engine and tank car (R. 18, 38-39, 50); that respondent produced no evidence to the effect that the drawbar or coupler was de-

fective in any degree, his evidence being that inspections made after the accident revealed no defects (R. 16, 29, 40).

Petitioner's evidence followed closely that of respondent's, just referred to, and also showed that there were no rules or regulations of the Interstate Commerce Commission in connection with how little or how much a drawbar may swing (R. 56); and that there was no device which kept the drawbar under tension so that it would not go to the right or left (R. 61). This evidence was not denied or rebutted by respondent.

The court, on respondent's behalf, gave an instruction tendering the alleged violation of the coupler section of the Safety Appliance Act which advised the jury that if the coupler on the engine was more than four inches out of line and, by reason thereof, automatic coupling upon impact would not have occurred, and that it necessitated plaintiff going between the engine and the car to line the coupler, then the Safety Appliance Act was violated (R. 78, III). Petitioner tendered three instructions to the effect that the drawbar must be in proper position to permit coupling in order that the Act be violated; that from the fact alone that the drawbar was over to one side, no violation could be found nor could a violation be found because it was necessary for respondent to adjust the drawbar prior to coupling. The trial court refused to give these instructions (R. 84, B, C, D).

JURISDICTIONAL STATEMENT.

The jurisdiction of this Court is invoked under Section 1257, Title 28, United States Code, providing for review by this Court, by certiorari, of decisions of the highest courts of the several states wherein a right, privilege or immunity is specially set up or claimed under the statutes of the United States. Petitioner asserts that the Supreme

Court of Missouri, contrary to law and to the decisions of this Court, has, to the detriment of petitioner, given an erroneous interpretation to the application and coverage of a federal statute, namely, 28 U. S. C. A. Title 45, Chapter 1, Section 2, being the coupler section of the Safety Appliance Act.

On November 12, 1951, the Supreme Court of Missouri, the highest court in that State, handed down its opinion affirming the judgment of the trial court. Within fifteen days thereafter and within the time specified by the rules of the Supreme Court of Missouri, petitioner filed its motion for rehearing and its motion to transfer the cause to the court en banc, which said motions were overruled on December 10, 1951. Petitioner has exhausted every opportunity for appellate review by the Supreme Court of Missouri. Petitioner filed and presented this petition, together with brief in support and the record, to this Court on February 27, 1952, which is within ninety days from December 10, 1951, the date of the judgment sought to be reviewed.

QUESTIONS PRESENTED.

1. Is not the interpretation of the coupler section of the Safety Appliance Act by the Supreme Court of Missouri, to the effect that the Act is violated when it is necessary to adjust the drawbar to permit automatic coupling on impact, erroneous and in conflict with the ruling of this Court in the cases of **Affolder v. New York, C. & St. L. R. Co.**, 339 U. S. 96, 94 L. Ed. 683, and **Carter v. Atlanta & St. A., B. R. Co.**, 338 U. S. 430, 94 L. Ed. 236?

2. Is not this interpretation of this federal statute by the Supreme Court of Missouri a failure to recognize the mechanical limitations of the coupling instrumentality and does it not hold that the Act is violated even though

the demand placed upon the instrumentality, that is, automatic adjustment of the drawbar to meet varying coupling requirements, is beyond its mechanical capacity and aptitude, and is not such holding in conflict with the decisions of this Court in the **Affolder** and **Carter** cases, supra?

3. Would not the recognition by this Court in the **Affolder** and **Carter** cases, supra, of the mechanical necessity of one of the couplers being open prior to attempted coupling as a prerequisite to a violation of this Act also apply equally well to the mechanical necessity of the drawbars being in alignment and is not, therefore, the holding of the Supreme Court of Missouri here in conflict with those decisions?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The Supreme Court of Missouri has interpreted Federal legislation of general importance, which is constantly involved in voluminous litigation in both Federal and State courts, in a way not in accord with but directly contrary to applicable decisions of this Court.

2. The Supreme Court of Missouri, in holding that the process of making the necessary alignment of drawbars prior to a coupling operation violates the coupler section of the Safety Appliance Act, requires that drawbars be automatically in such position as to insure automatic coupling upon impact under changing circumstances, a requirement which is beyond the mechanical capacity, function and aptitude of the coupling instrumentality. Is not such holding directly in conflict with the ruling of this Court in the **Affolder** and **Carter** cases? In those cases this Court recognized the mechanical limitations of the coupling instrumentality and, with such limitations in mind, held it had to be in its proper mechanical position

prior to coupling before the Act could be said to have been violated.

3. The ruling of the Supreme Court of Missouri would cause the Act to be violated whenever a drawbar is adjusted for coupling purposes regardless of whether the coupling is to take place on a curve or on a straight track and regardless of whether the cars to be coupled had been, prior thereto, uncoupled on a straight or curved track. If the cars, prior thereto, had been uncoupled on a curve and were to be coupled on a straight track, or vice versa, then, according to the Supreme Court of Missouri, the adjustment of the drawbar to meet the changed coupling requirements would be a violation of the Act, a holding directly contrary to that of the **Affolder** and **Carter** cases.

4. Undoubtedly this Court will take judicial notice of the fact that hundreds of thousands of coupling operations take place every day on our railroads. There should, therefore, be uniformity of interpretation of this Federal legislation between the highest Federal court and the State courts.

5. There is disparity between this ruling by the Supreme Court of Missouri and the ruling of this Court in the **Affolder** and **Carter** cases and, unless this Court grants certiorari to the end of securing uniformity between the State and Federal Courts, in all likelihood numerous like rulings will be handed down in other cases by State courts.

6. The holding by this Court in the **Affolder** and **Carter** cases rules the situation here. This Court in those cases recognized that the mechanical limitations of the coupling instrumentality were such that automatic coupling could not be effected unless one of the couplers was open and ruled, therefore, that the Act was not violated unless this mechanical demand was met prior to attempted coupling. The record in this case shows that the drawbars must be

in alignment prior to coupling to permit automatic coupling on impact. This mechanical requirement is just as necessary to automatic coupling as is the requirement that one of the couplers be open. The absence of either requirement prevents automatic coupling. The only difference between the two situations is that in the case of couplers they can be adjusted without the necessity of the men going between the cars while, as the record in this case shows, the engine drawbar must be manually adjusted from a position between the cars. Respondent's evidence was to the effect that there was no device permitting drawbar adjustment from a position not between the cars. The rulings, therefore, of this Court and that of the Supreme Court of Missouri are in direct conflict.

Wherefore, for the reasons herein stated, petitioner prays that this Court grant the issuance of the writ.

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